IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4473 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAVJI VIRA SOLANKI

Versus

RAJKOT SPG & WVG MILLS

Appearance:

1. Special Civil Application No. 4473 of 1990

MR KETAN A DAVE for Petitioner No. 1

MS VAIBHAVI NANAVATI, for NANAVATI & NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 13/03/2003

ORAL JUDGEMENT

The present petition is filed by the petitioner against the order and judgement passed by the Industrial

Court, Ahmedabad in Appeal I.C.No.44/1980, confirming the order and judgement passed by the Labour Court, Rajkot in B.I.R. Application No.22/1978 on 2-6-1980 whereby the petitioner's application for a declaration that his termination from service of the respondent-mills company, namely, Rajkot Spinning and Weaving Mills Ltd., a textile unit run by National Textile Corporation, was illegal and improper. The petitioner has also prayed for a mandatory direction for reinstatement in service with full backwages.

2) The brief facts giving rise to the present petition are that the petitioner was employed in respondent-mills company, originally known as Rajkot Spinning and Weaving Mills Co.Ltd., in the year 1942. At the time when the petitioner had joined the service of the respondent-mills company, the same was run by a private management. However, the said mills company was closed by its management in the year 1968 and at the time of closure of the mills company, the petitioner was working as a permanent workman on the post of Jober. The working of the respondent mills company was restarted in February, 1971 by the Gujarat State Textile Corporation Ltd., in its capacity as the authorised controller under the Industrial Development Regulation Act, 1959.

3) It is stated by the petitioner that in August, 1971 the petitioner approached the mills company for allowing him to resume his duties as the mills company was already restarted. On 18-8-1971, the respondentmills company had issued a letter to the petitioner stating that the mills company was restarted in February, 1971 and yet the petitioner had not resumed his duties and hence the petitioner remained absent without obtaining any prior leave and hence the petitioner has lost his rights attached with the permanent post.

4) The petitioner being aggrieved by the said communication had filed an application under Section 78 and 79 of the BIR Act before the Labour Court, Rajkot being Application No.220/1974, which was dismissed by the Labour Court on the ground that the petitioner has not approached the employer as required under Section 42 (4) of the Bombay Industrial Relations Act ("BIR Act for short), before filing the said application and also on the ground that the application was barred by limitation. The said order was passed by the Labour Court, Rajkot on 13-12-1977. During the pendency of the said application NO.220/1974, the respondent-mill company came to be nationalised by virtue of the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974, w.e.f.

1st April, 1974 and since then the unit was managed by National Textile Corporation.

5) The petitioner, after rejection of his earlier application No.220/1974 on 13-12-1977, sent an approach letter to the management of the respondent-mills company on 23-12-1977 requesting that he should be allowed to resume his duties. Since no communication was received by the petitioner pursuant to the said letter, the petitioner wrote another letter on 16-2-1978 and since no agreement materialised between the management of the respondent-mills company and the petitioner within the prescribed period of 15 days on the question of his being taken on duty, the petitioner filed an application before the Labour Court, Rajkot under Section 78 and 79 of the BIR Act. The said application being BIR Application No.22/1978 also came to be dismissed by the Labour Court vide its judgement and order dated 2-6-1980, on the ground that the petitioner's application was barred by principles of res judicata, in view of the fact that the petitioner's earlier application on the same subject matter has been dismissed by the Labour Court and also on the ground that the petitioner could not be granted any relief against the National Textile Corporation in view of the provisions contained in Sick Textile Undertakings (Nationalisation) Act, 1974.

6) Being aggrieved and dissatisfied with the said order of the Labour Court, the petitioner filed an appeal before the Industrial Court, Gujarat State, Ahmedabad, wherein Appeal (I.C.No.44/1980) which also came to be dismissed by the Industrial Court on 20th October, 1983. The Industrial Court dismissed the said appeal on the ground that the services of the petitioner had been terminated prior to the taking over of the mills company by the National Textile Corporation, in view of the relevant provisions contained in Sick Industrial Undertakings (Nationalisation) Act, 1974.

7) It is this order of the Industrial Court, which is under challenge in the present petition.

8) This petition was admitted by this Court on 20-6-1990 and the affidavit in reply was filed by the respondent-mills company on 4th July, 2000. Affidavit in rejoinder was also filed by the petitioner on 26th July, 2000.

9) Heard Mr.Ketan Dave, learned advocate appearing for the petitioner and Ms.Vaibhavi Nanavati, learned advocate appearing for respondent.

10) Mr.Dave, learned advocate for the petitioner has submitted that the Industrial Court has manifestly erred in law in holding that no relief could be granted against the National Textile Corporation in the matter of termination of service effected prior to the coming into force of the Sick Textile Undertakings (Nationalisation) Act, 1974. He has submitted that at no point of time, the petitioner's services had been terminated by the private management before the illegal closure of the mills company in 1968 or even at the time of the closure. The petitioner was in continuous service of the mills company since 1942 and when the working of the mills company was restarted in 1971, it was the new management, i.e. Gujarat State Textile Corporation in its capacity as the authorised controller, which did not allow the petitioner to resume his duties and on the contrary issued a letter dated 18-8-1971 informing him about the alleged discontinuation of his service on the permanent basis and also termination of rights and interest thereto. The petitioner was, therefore, in the continuous service of the respondent mills company even at the time when the Sick Textile Undertakings (Nationalisation) Act, 1974 had come into force, w.e.f. 1st April, 1974. Mr.Dave has, therefore, submitted that the petitioner could not be said to have been disentitled from claiming relief of reinstatement with backwages against the National Textile Corporation.

11) Mr.Dave has further submitted that the Industrial Court has committed an error of law appearing on the face of record, by not giving effect to the provisions contained in Section 14 (1) of the Sick Textile Undertakings (Nationalisation) Act, 1974. This Section runs as under:

"14. Employment of certain employees to continue

(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, employed in a sick textile undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in the National Textile Corporation, and

shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration terms and conditions of employment are duly affected by the National Textile Corporation."

Having regard to the aforesaid provisions, Mr.Dave has contended that if the petitioner is right in contending that his services had never been terminated by mills company, either by the private management or by the Gujarat State Textiles Corporation or by the National Textile Corporation, as the case may be, the petitioner should be deemed to be in the employment of the respondent-mills company, immediately before the appointed day. Mr.Dave has alternatively submitted that even if it is assumed that the petitioner's services had, in fact, been terminated by the respondent-mills company vide letter dated 18-8-1971, in that case also, the termination of the petitioner should have been regarded as clearly illegal, void and non est at law.

12) Mr.Dave has further submitted that the Industrial Court has palpably erred in law by misconstruing Section 14 (4) of the Sick Textile Undertakings (Nationalisation) Act, 1974. He has submitted that the scope of this Subsection is limited to the question of arrears of salary or the dues occurred prior to the nationalisation. Section 14 (4) of the Act runs as under:

"14. (4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the National Textile Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the extent such liability has been taken over by the Central Government under Section 5 enforce his claim against the owner of the sick textile undertaking but not against the Central Government or the National Textile Corporation."

Mr.Dave has submitted that above provision does not in any manner lay down that the claims for relief of continuing nature like that of reinstatement in service, cannot be made against the National Textile Corporation even when the termination has been effected prior to the nationalisation. Mr.Dave has further submitted that the

Industrial Court has not correctly appreciated the true effect of the judgement of the Hon'ble Supreme Court in the case of Workmen v. Bharat Coking Coal Ltd. and others, reported in 1978(2) LLJ, page 17/ 1978 (2) SCC page 175. In this case, the Hon'ble Supreme Court was dealing with the effect of Section 17 of the Coking Coal Mines (Nationalisation) Act, 1972 which was similar to the provisions of Section 14 of the Sick Textile Undertakings (Nationalisation) Act, 1974. The Hon'ble Supreme Court has observed in this case as under :

"Section 17 is a special provision relating to workmen and their continuance in service notwithstanding the transfer from private ownership to the Central Government or Government company. This is a statutory protection for the workmen and is express, explicit and mandatory. It is plain from the definition of 'workman' in Section 2 (s) of the Industrial Disputes Act that the dismissed workmen are workmen within the meaning of Section 17 of the Mines Act. It cannot be contended that because they had been wrongfully dismissed and, therefore, are not physically on the rolls on the date of the takeover, they are not legally workmen under the new owner. The statutory continuity of service cannot be breached by the wrongful dismissal by the prior employer. It is important that dismissal should be set aside and the award expressly directed reinstatement "with continuity of service by the management for the time being." Such finding has been given in the award and it is not challenged. What matters is not the physical presence on the rolls but the continuance in service in law because the dismissal is non est."

Mr.Dave has further relied on the decision of Allahabad High Court in the case of M/s. Bijli Cotton Mills v. Labour Court, Agra and others 1988 Labour I.C. page 659, wherein it is held as under :

"The right of employment of a workman continues notwithstanding the change of hands in the management or even ownership of the undertaking without the aid of express statutory provisions contained in S.14(1). S.14(1) confers on the employees of the erstwhile company an undoubted right to claim continuance of their employment and fastens upon the Corporation a corresponding

duty to take back such employees and treat them as their own. The workman who was in the employment of the sick mills and whose services were wrongfully terminated has a right of reinstatement enforceable under S.14(1) against the Corporation. S.5 of 1974 Act does not and cannot curb that right. The appropriate provision governing the case is S.14(1) and not S.5. Further, the right of a workman whose services have been wrongfully terminated is a continuing right and is not a past crystallized pecuniary liability covered by S.5.

S.14(1) which is a special provision which deals specifically with the subject of rights of the workmen who were and had been in the employment of such undertakings on the appointed date on their transfer and vesting in the National Textile Corporation. The present is undeniably a case of transfer of the ownership and management of an undertaking by operation of law. What will be the effect on the rights of workmen upon transfer will, therefore, be governed entirely by this special provision, namely, S.14(1) and not by S.25-FF which is indisputably a general provision. It is settled law that when a law generally deals with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed yielding the special."

13) Mr.Dave has further submitted that the petitioner's first application was dismissed on the ground of limitation. The said question ought to have been raised before the Labour Court during the course of proceedings of the second application and it is, therefore, not open to deal with it by the Labour Court, as well as, by the Industrial Court. However, it is to be seen that the starting point of limitation in the matter of filing of an application before the Labour Court arises after the end of the prescribed period of 15 days to be counted from the date when the request for change has been made under Rule 53 (2) of the BIR Rules, 1947. The petitioner's second application was well within time as the same had been filed within a period of three months from the expiry of 15 day's time from the date on which first approach letter dated 22-12-1977 was addressed to the employer. He has further submitted that the approach letter was not sent within a period of six months from the date on which the management issued the letter dated 18-8-1971, which was construed as an order

of termination by the Labour Court. However, the said time limit of six months has been prescribed in Rule 53 (1) of BIR Rules. The said Rule is clearly ultra vires of the provisions contained in Section 42 of the BIR Act, as Section 42 merely provides for prescribing the manner in which an approach is to be made to the employer before applying to the Labour Court. Neither Section 42 nor any other provision of the BIR Act does authorise rule making authority to prescribe any period of limitation in the matter of addressing the approach letter. Mr.Dave has, therefore, submitted that the provisions contained in Rule 53, in so far as the same prescribes six months limitation for sending the approach letter is ultra vires, void and inoperative. Even otherwise, the petitioner's application could not be thrown merely on the ground of delay. He relies on the decision of the Hon'ble Supreme Court in the case of Gurmail Singh v. Principal, Government College of Education and others reported in (2000) 9 SCC page 496, wherein it is held as under :

"Mere delay in challenging the termination would not be a bar to adjudication of the matter but could only deprive the workman of his backwages for the period of delay in raising the termination issue."

14) Mr.Dave has further submitted that though the petition was filed very late before this Court, the same could not be now dismissed on that ground as the petition once having been admitted and that too, after hearing both the sides, it cannot be thrown only on the ground of delay and latches. In support of his submission, Mr.Dave has relied on the decision of this Court in the case of Dr.Jayantilal Mohanlal Desai v. State of Gujarat and others, 1997 (1) GLR, page 617, wherein it is held as under ;

"If the petition is admitted, it cannot be thrown off on the technical plea of delay or latches or acquiescence. Once the petition is admitted, ordinarily it should be presumed that even if there is a delay, the same is condoned of course subject to the plea that may be raised by the other side on his appearance before the Court and in that case Court will have to consider the question about delay and decide in whose favour exercise of the discretion must tilt. If the plea is not raised by the otherside, but the contention about delay, latches or acquiescence is raised at the time of submitting arguments,

the same cannot be countenanced because in that case, the other side will have no chance to explain the delay by filing the affidavit."

15) Mr.Dave has further relied on the decision of this Court in the case of Babubhai Ranchhodbhai Patel v. State of Gujarat, 1993 (2) GLR, page 705, wherein it is held that "when the matter remained pending in the Court for number of years after being admitted, the Court ought not to dismiss the same on the ground of delay.

16) On the basis of the aforesaid submissions, Mr.Dave has strongly agitated before this Court that the order passed by the Industrial Court is absolutely illegal, unlawful, unjust and improper and the same has caused very serious prejudice to the petitioner and the said order is, therefore, required to be quashed and set aside.

17) On the other hand, Ms.Vaibhavi Nanavati,learned advocate appearing for respondent submitted that the present petition filed by the petitioner is not maintainable at law as the same is barred by delay and latches. The petitioner, in this petition, has challenged the order of the Industrial Court passed on 20th October, 1983 and the petition is filed in June, 1990, i.e. after more than seven years. She has further submitted that the petitioner has no right to challenge his termination against the respondent-mills company as per the provisions contained in the Sick Textile Undertakings (Nationalisation) Act, 1974 as he was never terminated by the present management under National Textile Corporation. She has further submitted that the judgement of the Hon'ble Supreme Court in the case of the Workmen v. Bharat Coking Coal Ltd. and others (supra) relied on by the petitioner supports the case of the respondent and it is also quite distinguishable on facts. In that case, the order of termination was held to be bad and that has become final. It was recorded that statutory continuity of service cannot be breached by the wrongful dismissal by the prior employer. It is important that the dismissal order was set aside and the award expressly directed reinstatement with continuity of service by the management for the time being. Such finding has been given in the award and it was not challenged. Here in the present case, the order of dismissal is not set aside by the Labour Court. On the contrary, the application moved by the petitioner was rejected by the Labour Court and the same has been confirmed by the Industrial Court. She has further submitted that the application moved by the petitioner

before the Labour Court is also barred by limitation as it is contrary to the provisions laid down in Section 42 (4) of the BIR Act. In support of her submissions, she relied on the decision of this Court in the case of Ishwarbhai Mulchanddas Modi v. Vadnagar Nagrik Co-operative Bank Ltd., 1988 (1) GLR page, 507, wherein it is held that "once the application is received whether it is within ten days of the passing of the order or five months of the passing of the order, the period of six months to get exhausted and the period of 15 days prescribed by Rule 53(2) begins to run. If, no agreement is arrived at between the employer and the employee within 15 days and if the time is not extended, a dispute comes into existence within the meaning of Section 79 (3) of the Act. The said period of limitation for filing an application for a decision on the said decision is three months after arising of dispute. In absence of a specific provision in extention of this period of three months, it was held that the application filed by the petitioner after the expiry of the said period, was clearly barred by limitation. She further relied on the decision of this Court in the case of Amarsinhji Mills Ltd. v. Sanalal G.Patvi and otehrs, (1971) 12 GLR, 117 wherein it is held that under the proviso to Section 42(4) of the Bombay Industrial Relations Act, it is incumbent on the employee to make request in the prescribed manner for a change and the second requirement is that if within the prescribed time, no agreement must have been arrived at in respect of the change until the prescribed period expires, it cannot be said that no agreement has been arrived at in respect of the change within the prescribed period. Therefore, the employee must wait till the prescribed period is over and it is only after the prescribed period is over, it can definitely be said in respect of a particular matter that no agreement had been arrived at in respect of the change within the prescribed period. It is in the light of this special requirements of proviso to Section 42(4) of the Act that legislature has laid down a deeming fiction in the Explanation to Section 78 and has stated that the dispute in Section 78(1) (A) (a) shall be deemed to have arisen if within prescribed period no agreement is arrived at. Therefore, the starting point of limitation must be taken to be the end of period of 15 days prescribed under the Rules. This 15 days period is to be counted from the date when the request for change has been made.

18) Ms.Vaibhavi Nanavati has further relied on the decision of the Hon'ble Supreme Court in the case of M/s.Chhotabhai Jethabhai Patel & Co. v. Industrial

Court, Maharashtra, AIR 1972, Supreme Court, Page 1268, wherein it is held that "the Labour Court cannot exercise jurisdiction under Section 78(1) (B) in a case where the employee of an industry governed by the Act has not complied with the provisions of Section 42(4) read with the proviso to the sub-section. It is necessary for an employee first to approach the employer before applying to the Labour Court for any relief under Section 78(1) (c). In other words, effort must first be made by the employer intending to effect any change in respect of matters covered by Section 42(1) or an employee desiring change in respect of any order passed by the employer under standing orders, which would exist. No order of dismissal can be challenged without examining as to whether it is possible to come to any agreement and an application to the Labour Court can only be resorted after efforts have been made to settle the dispute and no agreement has been arrived at. She has further relied on the decision of the Hon'ble Supreme Court in the case of Raipur Manufacturing Co.Ltd. v. Okhabhai Devrajbhai Patni, 1976(1), LLJ page 215. In this case, the respondent was a workman in the appellant company and he challenged the order of retirement under Section 79(1) read with Section 78 (1) (A) (a) (i) of the Bombay Industrial Relations Act. It was resisted by the management among other grounds, with a primary objection, that the application was time barred. The Labour Court and the Industrial Court upheld this objection and the High Court reversed it holding that the application was within the time limit and remanded the said application for adjudication on merits. It was, this order of the High Court which was under challenge before the Hon'ble Supreme Court and it was held that the High Court was in error in holding that the application was not time barred. By reversing the High Court's judgement, the Hon'ble Supreme Court has observed that it was never the case of the respondent that further period was mutually fixed and that saved his case from the bar of limitation. The relief that was asked for from the Labour Court, as well as, Industrial Court was condonation of delay but so far as this relief is concerned, the Labour Court had unfortunately no power to condone the delay and hence his request was rejected. As far as the delay in filing the present petition before this Court is concerned, it was submitted by the learned advocate for the respondent that there is no justifiable reason for such a long delay. She has relied on the decision of the Hon'ble Supreme Court in the case of Scooters India and others v. Vijay E.V. ELDRED (1998) 6 SCC 549, wherein it is held that "the writ petition challenging the order of termination was filed after a long delay and more than six years and

hence it was held to be not maintainable."

19) Ms.Vaibhavi Nanavati has further submitted that National Textile Corporation (Gujarat) Limited has been declared sick industrial undertaking under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and the case of the Corporation is registered as case No.PSU(C) 535/1992 with the Board for Industrial and Financial Reconstruction. The reference made to the said Board under Section 16 of the Act is pending. In view of the provisions contained in Section 22(1) of the said Act, the petition does not lie or it cannot be proceeded with against the respondent-company even on this ground also and hence the petition is required to be dismissed.

20) Lastly Ms.Nanavati has relied on the decision of this Court in the case of Textile Labour Union v. Prabha Textile Mills Co.Ltd. being Special Civil Application No.8833/1989 decided on 23-2-2001, wherein also the similar issue was involved and the Court has taken the view that the scheme of the Act is that for the period prior to 31-3-1974, the workmen were to make whatever claims they had only against the previous owner and not against the Central Government or the National Textile Corporation. It may be that if the old management had not terminated their services in accordance with law, the workman may make claim against the previous owner of the textile undertaking and for dealing with such claims, Chapter 6 of the Act contain detailed provisions. Second Schedule to the Nationalisation Act contains the priorities of the claims including arrears for pre-take over management period and post take over management period. For the pre-take over management period, arrears in relation to provident fund, salary and wages and other amounts due to an employee are given priority over other dues for the pre-take over management period though they rank below the dues for the post take over management period.

21) On the basis of the aforesaid submissions and authorities relied upon by Ms.Nanavati, she has urged before the Court that the petition filed by the petitioner does not deserve any relief and no indulgence should be shown by this Court while exercising writ jurisdiction under Article 226/227 of the Constitution of India and hence it should be dismissed with costs.

22) After having heard the learned advocates appearing for the respective parties and after considering their submissions, as well as the authorities

relied upon by them and the relevant provisions of the concerned Acts, I am of the view that there are more than one reasons for dismissing this petition. Firstly, the Labour Court and Industrial Court have rightly come to the conclusion that the petitioner is not entitled to claim any benefits with regard to reinstatement or backwages against National Textile Corporation. The provisions contained in Section 14(4) of Sick Textile Undertakings (Nationalisation) Act, 1974 are very clear, which prohibits the employee from claiming any relief against the Central Government or National Textile Corporation. Such person or employee may claim such relief against the previous employer. The judgement of the Hon'ble Supreme Court in the case of the Workmen v. Bharat Coking Coal Ltd. & others (supra) relied upon by the petitioner renders no assistance to the petitioner as in that case, the Labour Court has set aside the award and expressly directed the reinstatement with continuity of service. In that context, the Hon'ble Supreme Court has observed that the matter is fit for continuance in service in law because the dismissal is not est. Here in the present case, such a situation is not there as neither the Labour Court nor the Industrial Court has held that the order of termination is bad in law or it is non-est. Not only this, both the Courts have given concurrent finding that the petitioner is not entitled to claim any relief, with regard to reinstatement with continuity of service and backwages from the National Textile Corporation. It is one more reason for dismissal of the petition and that is the application moved by the petitioner before the Labour Court is barred by limitation. The Labour Court has given this finding, however, the Industrial Court has not gone into that aspect. The fact still remains that the application was not moved by the applicant within the prescribed time limit as envisaged under Section 42(4) of the Act and Rule 53(2) of the Rules. If the date of termination is considered to be 18-8-1971, the first application was moved by the petitioner before the Labour Court in 1974, that too without sending the approach letter to the employer. This application was clearly barred by limitation and contrary to the provisions of the Act and hence it was rightly rejected by the Labour Court. While rejecting the said application, the Labour Court has not granted any permission to move a fresh application. As a matter of fact Rule 53 prescribes that any employees or representative union desiring a change in respect of any order passed by the employer under the Standing Orders shall make an application in writing to the employer, which is to be made within the period of six months from the date of such order. Sub-Rule (2) provides that an

employer and employee may arrive at an agreement within 15 days of the receipt of the application or any such further period, as may be mutually fixed by the employer and after receipt of such an application by the employer, if no arrangement is arrived at, in respect of an order, matter or change referred to in the said proviso within the period of three months, the application before the Labour Court is required to be made. There is no provision for condonation of delay and hence the Labour Court has rightly rejected the first application. There is no scope of preferring second application and even if it is preferred, the same is not maintainable. Therefore, the second application was also rightly rejected by the Labour Court and confirmed by the Industrial Court. The authorities referred to and relied on by the respondent-mills company, which are discussed in the foregoing paras also support the case of the respondent and what is held in these cases is that belated application is not maintainable. Thirdly, the respondent mills company has come forward with the case that its proceedings are pending before the Board for Industrial and Financial Reconstruction and hence in view of the provisions contained in Section 22(1) of the Sick Industries (Special Provisions) Act, 1985, no proceedings against the sick company would either lie or be proceeded with. Even on this ground, the relief claimed by the petitioner cannot be granted. Moreover, the petition was filed after more than seven years. Though it was admitted by this Court, this Court is not powerless in dismissing the petition on this ground of delay coupled with other grounds. Here in the present case, as stated earlier there are various reasons for dismissal of the petition and while considering those other reasons, the ground regarding delay and latches is certainly weighed with the Court and when there is no sufficient reason or the interest of justice or the plea regarding interest of justice does not impress the Court, the Court would not normally condone the delay.

23) Having regard to all these facts and circumstances of the case and considering the statutory provisions, as well as legal pronouncements on the subject, I am of the view that there is no substance or merits in the petition and hence it is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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